

1 THE HONORABLE MARSHA J. PECHMAN  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON

9 ANA LOPEZ DEMETRIO and FRANCISCO  
10 EUGENIO PAZ, individually and on behalf of  
11 all others similarly situated,

12 Plaintiffs,

13 v.

14 SAKUMA BROTHERS FARMS, INC.,

15 Defendant.

16 NO. 2:13-cv-01918-MJP

17 **ORDER GRANTING PLAINTIFFS'**  
**MOTION FOR FINAL APPROVAL**  
**OF CLASS ACTION SETTLEMENT**  
**REGARDING CERTIFIED**  
**QUESTIONS AND PLAINTIFFS'**  
**MOTION FOR AWARD OF**  
**ATTORNEYS' FEES AND EXPENSES**

18 NOTE ON MOTION CALENDAR:  
19 July 8, 2016 at 2:00 p.m.

20 WHEREAS, on April 1, 2016, this Court entered an Order Granting Preliminary  
21 Approval of Class Action Settlement Regarding Certified Questions (Dkt. #31) (the  
22 "Preliminary Approval Order"); and

23 WHEREAS, individual notice complying with Rule 23 of the Federal Rules of Civil  
24 Procedure was sent to the last-known address of each member of the Settlement Class and  
25 additional notice procedures outlined in the Motion for Final Approval of Class Action  
Settlement Regarding Certified Questions have been completed; and

26 WHEREAS, a fairness hearing on final approval of the settlement was held before the  
Court on July 8, 2016; and

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**FEES AND EXPENSES - 1**  
CASE NO. 2:13-CV-01918-MJP

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1           WHEREAS, the Court, being advised, finds that good cause exists for entry of the  
2 below Order; now, therefore,

3           IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED THAT:

4           1.       Unless otherwise provided herein, all capitalized terms in this Order shall have  
5 the same meaning as set forth in the Stipulation of Settlement and Release Regarding Certified  
6 Questions (Dkt. #62) (the “Settlement Agreement”) and/or Plaintiffs’ Motion for Preliminary  
7 Approval Of Class Action Settlement Regarding Certified Questions (Dkt. #60).

8           2.       The Court finds that notice to the Settlement Class has been completed in  
9 conformity with the Preliminary Approval Order. The Court finds that this notice was the best  
10 notice practicable under the circumstances, that it provided due and adequate notice of the  
11 proceedings and of the matters set forth therein, and that it fully satisfied all applicable  
12 requirements of law and due process.

13           3.       Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court has  
14 certified the following Settlement Class: “All migrant and seasonal employees of Sakuma who  
15 performed piece-rate fruit harvest work for Sakuma in Washington in 2014 or 2015.”

16           4.       In connection with this certification, the Court makes the following findings:

17               a.       The Settlement Class is so numerous that joinder of all members is  
18 impracticable;

19               b.       There are questions of law or fact common to the Settlement Class for  
20 purposes of determining whether this settlement should be approved;

21               c.       Plaintiffs’ claims are typical of the claims being resolved through the  
22 proposed settlement;

23               d.       Plaintiffs are capable of fairly and adequately protecting the interests of  
24 the Settlement Class members in connection with the Settlement;

25               e.       For purposes of determining whether the Settlement is fair, reasonable  
26 and adequate, common questions of law and fact predominate over questions affecting only

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1 individual Settlement Class members. Accordingly, the Settlement Class is sufficiently  
2 cohesive to warrant settlement by representation; and

3 f. For purposes of Settlement, certification of the Settlement Class is  
4 superior to other available methods for the fair and efficient settlement of the claims of the  
5 Settlement Class members.

6 5. The Court has appointed Ana Lopez Demetrio and Francisco Eugenio Paz as  
7 representatives of the Settlement Class.

8 6. The Court has appointed Marc Cote and Toby Marshall of Terrell Marshall Law  
9 Group PLLC and Daniel Ford of Columbia Legal Services as Class Counsel.

10 7. No objections to the Settlement have been lodged, and no Settlement Class  
11 Member has opted out of the Settlement.

12 8. The terms set forth in the Settlement are approved as being fair, adequate, and  
13 reasonable in light of the degree of recovery obtained in relation to the risks faced by the  
14 Settlement Class in litigating the claims. The Settlement Class is properly certified as part of  
15 this Settlement. The relief provided to the Qualified Class Members who performed piecework  
16 in 2014 is appropriate as to the individual Qualified Class Members and the Settlement Class as  
17 a whole.

18 9. As part of the Settlement, Defendant agreed that Class Counsel are entitled to  
19 reasonable attorneys' fees and costs for the work on the certified questions and resolution of the  
20 2014 rest break claims pursuant to RCW 49.48.030 but did not agree on the amount of the  
21 award.

22 10. This Court has reviewed Plaintiffs' Motion for Award of Attorneys' Fees and  
23 Expenses, Defendant's Response, and Plaintiffs' Reply.

24 11. The Court awards \$235,000 in attorneys' fees, \$4,951.89 in litigation expenses,  
25 and \$11,747.47 in settlement notice and administration fees and costs to Class Counsel. These  
26 attorneys' fees and expenses are fair and reasonable under RCW 49.48.030 based on the

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1 lodestar method. The Court reaches this conclusion after analyzing (1) the number of hours  
 2 Class Counsel reasonably expended on the certified-question litigation multiplied by counsel's  
 3 reasonable hourly rates; (2) the recovery Class Counsel obtained for Qualified Class Members  
 4 who worked in the 2014 season as well as Class Counsel's efforts that caused Sakuma's full  
 5 payment for rest breaks in the 2015 season; (3) the diligent and efficient effort utilized by Class  
 6 Counsel in litigating the certified questions in this Court and at the Washington Supreme Court;  
 7 (4) Class Counsel's substantial experience in wage and hour and complex litigation and the  
 8 skill utilized to achieve the successful result in the Washington Supreme Court and in the  
 9 Settlement; (5) the hurdles to certifying the Settlement Class and proving liability and damages  
 10 at trial before the certified questions were presented to the Washington Supreme Court; (6) the  
 11 relationship between the amount of the fee requested and the excellent result obtained for the  
 12 Settlement Class; and (7) the reasonableness of the litigation costs and settlement notice and  
 13 administration fees and costs incurred by Class Counsel.

14       12. Class Counsel reasonably expended more than 710 hours on the certified-  
 15 question litigation in this Court and the Washington Supreme Court, not including hours spent  
 16 on the settlement notice and administration process. Class Counsel filed detailed  
 17 documentation of the time they spent investigating, litigating, researching legal issues, drafting  
 18 several briefs to this Court and the Washington Supreme Court, preparing for oral argument at  
 19 the Washington Supreme Court, and negotiating a settlement of the certified-question claims.  
 20 Their detailed time records are based on contemporaneous records of hours worked. Class  
 21 Counsel exercised billing judgment and made reductions where time arguably could be  
 22 considered "unnecessarily duplicative" or could have been more efficiently spent.

23       13. Class Counsel's hourly rates—\$300 for Marc Cote, \$400 for Toby Marshall, and  
 24 \$375 for Daniel Ford—are reasonable hourly rates considering these attorneys' "experience,  
 25 skill and reputation," *see Trevino v. Gates*, 99 F.3d 911, 924 (9th Cir. 1996) (quoting *Schwarz*

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1       *v. Sec'y of Health & Human Servs.*, 73 F.3d 895, 908 (9th Cir.1995)), and considering "the  
 2 prevailing market rates" in this District. *See Blum v. Stenson*, 465 U.S. 886, 895 (1984).

3       14. Applying these reasonable hourly rates to the hours reasonably expended in this  
 4 litigation, Class Counsel's lodestar is approximately \$205,615. This lodestar reflects work that  
 5 was reasonably and necessarily expended on the certified-question claims.

6       15. Plaintiffs seek a modest lodestar multiplier for a total attorney fee award of  
 7 \$235,000.

8       16. The total amount of reasonable attorneys' fees and costs incurred on Plaintiffs'  
 9 fee motion, the issues relating to production of Defendant's fee records, and the reply brief on  
 10 the fee motion is approximately \$21,305. The Court finds this amount to be reasonable under  
 11 the circumstances of this case.

12       17. This Court will not apply a multiplier for the work on the fee motion.  
 13 Subtracting \$21,305 from \$235,000 results in \$213,695. The total amount of fees incurred by  
 14 Class Counsel excluding work relating to the fee motion is \$184,310 (\$205,615 minus  
 15 \$21,305). Thus, with no multiplier applied to the hours worked relating to the fee motion, the  
 16 requested multiplier is approximately 1.16 (\$213,695 divided by \$184,310).

17       18. Based on the risk Class Counsel faced in litigating the certified questions and  
 18 the quality of the work they performed, this Court finds a lodestar multiplier of approximately  
 19 1.16 is appropriate, resulting in a total attorney fee award of \$235,000.

20       19. A lodestar multiplier is appropriate in this case based on the risk factor. *See*  
 21 *Carlson v. Lake Chelan Cnty. Hosp.*, 116 Wn. App. 718, 742-43, 75 P.3d 533 (2003)  
 22 (affirming application of 1.5 multiplier to lodestar); *Vizcaino v. Microsoft Corp.*, 290 F.3d  
 23 1043, 1052-54 (9th Cir. 2002) (approving multiplier of 3.65). "In contingency cases such as  
 24 those brought under [remedial employment statutes], Washington courts have recognized that  
 25 the prospect of an upward adjustment is an important tool in encouraging litigation." *Wash.*  
 26 *State Commc'n Access Project v. Regal Cinemas, Inc.*, 173 Wn. App. 174, 221, 293 P.3d 413

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1 (2013) (“*WashCap*”). Here, Plaintiffs pursued the certified-question claims under a remedial  
 2 Washington employment statute and regulation concerning rest breaks for agricultural workers.  
 3 Furthermore, Class Counsel pursued the certified-question claims on a contingency fee basis.  
 4 Thus, Class Counsel assumed the risk that if they were unsuccessful, they would receive no  
 5 compensation for their work on the certified questions. At the time Class Counsel decided to  
 6 take on the rest break pay issues, there was no Washington case that had addressed the issues  
 7 underlying the certified questions, and only one state, California, had adopted the position  
 8 Plaintiffs advocated. Thus, this was an issue of first impression in Washington.

9       20. In addition, a lodestar multiplier is appropriate based on the quality of work  
 10 performed by Class Counsel. Class Counsel performed high-quality work, resulting in a  
 11 unanimous Washington Supreme Court opinion on an issue of first impression. Class  
 12 Counsel’s work resulted in Defendant’s agreement to provide full rest break pay to all 2014  
 13 pieceworkers, plus interest, in addition to a change in Defendant’s pay system that ensured all  
 14 workers would receive full rest break pay beginning in 2015. This was an excellent result for  
 15 the Class.

16       21. Defendant also “stipulate[d] and agree[d] that Plaintiffs are also entitled to  
 17 reasonable . . . costs pursuant to RCW 49.48.030 for their counsel’s work on the certified  
 18 questions and resolution of the 2014 rest break claims.” Dkt. # 62 at 6. The litigation expenses  
 19 and settlement notice and administration fees and costs incurred by Class Counsel were  
 20 reasonable, necessary, and appropriately documented in the declarations filed by Class  
 21 Counsel. Thus, this Court finds that Class Counsel are entitled to an award for those costs  
 22 totaling \$4,951.89 for reasonable litigation expenses and \$11,747.47 for reasonable settlement  
 23 notice and administration fees and costs.

24       22. The Settlement Agreement is binding on all Settlement Class Members.

25       23. Pursuant to the terms of the Settlement Agreement, Defendant shall issue  
 26 payment to each of the Qualified Class Members who performed piecework for Defendant in

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1 2014 in an amount equal to (1) his or her unpaid rest break wages for the 2014 season,  
 2 calculated at the worker's regular hourly rate (determined based on the average hourly rate each  
 3 week from piecework) or minimum wage, whichever is higher, plus (2) prejudgment interest on  
 4 the full amount of rest break wages owing to each Qualified Class Member who performed  
 5 piecework in 2014 at 12% per year (from the time wages were due after each pay period until  
 6 the date of this Order). In the event that any Qualified Class Members fail to cash any award  
 7 checks within one year of distribution, Sakuma shall disburse such funds to the non-profit  
 8 organization Catholic Community Services in Skagit County, with a request that any such  
 9 funds be earmarked for farm worker assistance. The work of Catholic Community Services in  
 10 Skagit County benefits low-income immigrant workers who may require legal assistance, and  
 11 their work therefore serves "the objectives of the underlying statutes[] and the interests of the  
 12 silent class members . . ." *Lane v. Facebook, Inc.*, 696 F.3d 811, 819-20 (9th Cir. 2012)  
 13 (internal quotation omitted).

14       24. Pursuant to the terms of the Settlement Agreement, upon final approval by the  
 15 Court, the Settlement Class, including each Settlement Class Member who has not submitted a  
 16 timely and valid written request to opt out of the Settlement, releases, to the extent permitted by  
 17 law, Sakuma Brothers Farms, Inc., from any and all claims for alleged violations of WAC 296-  
 18 131-020 that arose in 2014 and 2015.

19       25. Without affecting the finality of this Order, or the judgment to be entered  
 20 pursuant hereto, in any way, the Court retains jurisdiction over the claims against Defendant for  
 21 purposes of addressing: (1) any disputes arising from the Settlement Agreement; (2) settlement  
 22 administration matters; and (3) such post-judgment matters as may be appropriate under the  
 23 Federal Rules of Civil Procedure.

24       26. The Clerk shall enter a judgment certifying the Settlement Class, finally  
 25 approving the Settlement Agreement, and awarding \$235,000 in attorneys' fees, \$4,951.89 in  
 26

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1 litigation expenses, and \$11,747.47 in settlement notice and administration fees and costs to  
2 Class Counsel.

3 IT IS SO ORDERED.  
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5 DATED this 8th day of July, 2016.

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